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SENATE BILL 531

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO REAL PROPERTY; MAKING THE RIGHT OF REDEMPTION
CONNECTED TO THE REAL PROPERTY BEING REDEEMED; CHANGING THE
TIME PERIOD FOR THE STATE TO REDEEM THE REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 39-5-18 NMSA 1978 (being Laws 1931,
Chapter 149, Section 2, as amended) is amended to read:

"39-5-18. REDEMPTION OF REAL PROPERTY SOLD UNDER JUDGMENT
OR DECREE OF FORECLOSURE--NOTICE AND HEARING--REDEMPTION
AMOUNT.--

A. After sale of [~~any~~] real estate pursuant to [~~any~~
~~such~~] the judgment or decree of [~~any~~] a court, the real estate
may be redeemed by the former defendant owner of the real
estate, his heirs or personal representatives [~~or assigns~~] or
by any junior mortgagee or other junior lienholder:

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1 (1) by paying to the purchaser or his personal
2 representatives [~~or assigns~~], at any time within nine months
3 from the date of sale, the amount paid, with interest from the
4 date of purchase at the rate of ten percent a year, together
5 with all taxes, interest and penalties thereon, and all
6 payments made to satisfy in whole or in part any prior lien or
7 mortgage not foreclosed, paid by the purchaser, with interest
8 on such taxes, interest, penalties and payments made on liens
9 or mortgages at the rate of ten percent a year from the date of
10 payment; or

11 (2) by petitioning the district court in which
12 the judgment or decree of foreclosure was entered for a
13 certificate of redemption and by making a deposit of the amount
14 set forth in Paragraph (1) of this subsection in cash in the
15 office of the clerk of the district court in which the order,
16 judgment or decree under which the sale was made was entered,
17 at any time within nine months from the date of sale.

18 B. Copies of the petition for redemption shall be
19 served upon the purchaser of real estate under a foreclosure
20 sale or his personal representatives [~~or assigns~~].

21 C. Any purchaser of real estate under a foreclosure
22 sale or his personal representatives [~~or assigns~~], upon being
23 served with the petition for redemption of the property, shall
24 answer the petition within thirty days after service of the
25 petition.

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1 D. The hearing shall be governed by the rules of
2 civil procedure. At the hearing, the judge shall determine the
3 amount of money necessary for the redemption, which shall
4 include the money paid at the sale and all taxes, interest,
5 penalties and payments made in satisfaction of liens, mortgages
6 and encumbrances. At the conclusion of the hearing, the
7 district court may order the clerk of the court to issue the
8 certificate of redemption upon such terms and conditions as it
9 deems just.

10 E. A trustee's sale pursuant to a power of sale in
11 a deed of trust as provided in the Deed of Trust Act is not a
12 sale of real estate pursuant to a judgment or decree of a
13 court. Except as provided in this section as to the rights of
14 an omitted junior encumbrancer, no real estate may be redeemed
15 from a trustee's sale. A junior encumbrancer who does not have
16 actual notice or knowledge of the trustee's sale and who has
17 been otherwise omitted from the trustee's sale proceeding shall
18 be entitled to redeem the trust real estate by petitioning the
19 district court in the county where the trustee's sale was held.
20 The action shall proceed as provided in Subsections B through D
21 of this section. The purchaser of the trust real estate at the
22 trustee's sale or the successors and assigns of the purchaser
23 may likewise petition the district court to terminate the right
24 of redemption of an omitted junior encumbrancer. In any such
25 action, the redemption period shall be nine months or the

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1 period provided in the deed of trust, whichever is the lesser
2 period, and shall begin to run from the date judgment is
3 entered in the action.

4 F. The right of redemption is not a separate real
5 estate property interest that can be assigned without sale or
6 assignment of the real estate, junior mortgage or other junior
7 lien interest giving rise to such right of redemption."

8 Section 2. Section 42-6-14 NMSA 1978 (being Laws 1947,
9 Chapter 150, Section 3) is amended to read:

10 "42-6-14. JUDICIAL SALE--ALTERNATIVE REMEDIES.--~~[Except~~
11 ~~as herein otherwise provided]~~ A judicial sale made in pursuance
12 of a judgment in such a suit shall have the same effect
13 respecting the discharge of the property from liens and
14 encumbrances held by the state as may be provided with respect
15 to such matters by law as to all other persons; provided that a
16 sale to satisfy a lien inferior to one of the state shall be
17 made subject to and without disturbing the lien of the state,
18 unless the state, by its attorneys, consents that the property
19 may be sold free of its mortgage or lien and the proceeds
20 divided as the parties may be entitled; and provided, further,
21 that where a sale of real estate is made to satisfy a lien
22 prior to that of the state, the state shall have [~~nine months~~
23 ninety days from the date of sale within which to redeem. In
24 any case where the debt owing the state is due, the state may
25 ask, by way of affirmative relief, for the foreclosure of its

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1 own lien or mortgage [~~and~~]. In any case where property is sold
2 to satisfy a first mortgage or first lien held by the state,
3 the state may bid at the sale [~~such~~] a sum not exceeding the
4 amount of its claim with expenses of sale, as may be directed
5 by the head of the [~~department, bureau or other~~] agency of the
6 state [~~which~~] that has charge of the administration of the laws
7 in respect of which the claim of the state arises."

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